

WESTERLY WILL CONTEST

Six Hours' Hearing on Petition Against Probating Will of Miss Ellen Burke—About \$2,000 Disposed of—Testimony Concluded on Wednesday—Liquor Prosecution—Students Burned by Exploding Chemicals.

There was a special meeting of the Western town council Wednesday. President Clarke presiding and all members in attendance. Town Solicitor Kingsley stated that a committee had, with Governor of the State, considered the claim of Angelo Di Mario and effected a settlement for \$200, which had been paid by the owner of the poor. It was voted that Mr. Burke have a town order for the sum expended.

The council then went into session as a court of probate to consider the petition for admitting to probate the will of Miss Ellen Burke.

Judge Nathan E. Lewis, counsel for contestants, made motion that all witnesses be excluded except those testifying which was ordered after discussion. Judge John W. Sweeney represented the executors of the will.

President Clarke made an appeal for the parties in interest to get together and settle the matter and preserve the family ties. The counsel stated that they had made every effort to settle the case, but it was impossible to reach any agreement.

The hearing was then commenced, and Clerk Wagon read the will, the bequests being as follows: House and lot in Cross street to her niece, Hannah Fay; \$100 to St. Paul's church, Cambridge, Mass.; \$50 to Ellen, wife of Cambridge, a cousin; \$50 to Katherine Ford; \$50 to Rev. J. F. Ryan, St. Paul's church, Cambridge; \$50 to Nellie Mahoney, godchild; \$50 to Rev. Peter McCoscar of Western; \$50 to the Church of Our Lady of Perpetual Help, Roxbury; \$50 to Patrick Burke, her brother; the residue of the estate to be devoted to masses for the repose of her soul.

Albert Carpenter, one of the witnesses to the will testified he resided in same house with Miss Burke. He had known deceased for four months. Miss Burke said the document was her will and wish, and she was of apparent sound mind.

On cross-examination by Mr. Lewis, said he hired the tenant from James Burke and paid rent to him. Mr. Burke signed the receipts with Miss Burke's name and his initials. Albert Carpenter and witness signed the will together. Father John Dunn was present, and asked Carpenter to be witness to will. Miss Burke said to witness: "Ain't I a smart one?"

Miss Burke this was her will, and asked her if it was her will and wish. He wanted to sign, and she said she was willing to sign, and did so with her mark. Father Dunn handed her the pen and she handed it back. The will was signed three days before her death. She was sick in bed about four days before she died. Witness called to see her each evening and she recognized and talked with him.

Councilman Scanlon asked witness if Miss Burke was in her right mind when she signed the will. He said she was, and also in right mind the night after. He had no interest in the will. In response to queries from Mr. Lewis, said that Patrick Burke had questioned him concerning the will. He did not tell Burke that he knew Miss Burke up to sign the will, and the next day he was raising her up for, as Miss Burke knew she was to sign the will.

Mrs. Albert B. Carpenter, the other witness to the will, testified substantially the same as her husband. Miss Burke said the document signed was her will.

Witness in response to questions of Councilman Scanlon, said that he knew she was signing the will. He was of sound mind and was of good mental condition the day after.

Dr. Frank C. Pagan said he had treated Miss Burke about a year ago and again in her final illness. In answer to a question of Councilman Scanlon, Dr. Pagan said he considered Miss Burke competent to make her will.

In response to query from Councilman Langworthy, Dr. Pagan said that Tuesday morning she had made plans concerning her will.

Dr. John Dunn said he had been a Catholic priest twenty years, and resided in Western since last May. He came acquainted with Miss Ellen Burke last Christmas eve. When Miss Burke on Wednesday morning, again in the evening and on Thursday, Wednesday evening, he came to her very bright and was speaking about getting up, but he advised her to comply with the doctor's order. He administered extreme unction on Wednesday morning, in case of serious illness. Miss Burke first spoke of making her will and that the doctor had so advised her. The priest told her she made a will her mind would be probably relieved. She then asked witness to write her will. He said he did not want him to write, and then made the will. It required about an hour and a half to make the memorandum of the will, as he had no knowledge of the family. The memorandum was taken in the morning and the will written during the day and completed in the evening. Miss Burke suggested Edward M. and James W. Burke as executors, but witness told her that it would be better for her to substitute someone else for Edward, as he was judge of probate and perhaps not qualified. He considered it proper for him to draw the will. There was no one in the room when the memorandum for will was taken except Miss Burke and the witness. No one else said anything to him regarding the will or its contents. Before the will was signed, Father Dunn asked Miss Burke if the document that was her last will and wish, and she said it was. After Dr. Pagan had given opinion that Miss Burke would not survive, the priest told Miss Burke that the end was drawn and she said the prayers for the dead. There was about three hours after the will made, but she lived three days thereafter. Father Dunn said he was not acquainted with Mr. and Mrs. Carpenter, the witnesses to the will. Neither James W. Burke nor Miss Hannah Fay had any talk with witness concerning the will.

In reply to questions by Judge Sweeney, Father Dunn said he was given all the information in the will by Miss Ellen Burke. No one suggested any names in the will except Ellen Burke. Witness followed Miss Burke, who was of sound mind when the will was made and that the contents were what Miss Burke desired. Miss Burke left the impression that she possessed less than \$1,000.

On cross-examination by Mr. Lewis, Father Dunn testified he did not participate at any time that Miss Burke's mind was wandering, and he believed her to be of sound mind.

Patrick Burke testified that he had resided in Western for 23 years and was brother of Miss Ellen Burke, the testatrix. He visited his sister two or three times a month, besides seeing her at church Sundays. He could not recall whether he met Father Dunn on Tuesday at Miss Burke's home. On Tuesday evening Father Dunn told him Miss Burke was quite sick. Wednesday night he asked Father Dunn if she had made a will, and in said she had, and the witness said it was queer that she should make a will without her brother's knowledge, and Father Dunn replied that she should be left to her own will. Miss Burke's mind was wandering, for on Tuesday and Wednesday she was talking of things in Ireland.

Mr. Burke said she spent Wednesday afternoon at the home of his sister, Dr. Pagan came in that afternoon at 2 o'clock and said there had been a change for the worse. The doctor may not have said so, but that is what he meant. Wednesday evening the deceased recognized witness, but Hannah Fay warned witness and members of his family not to disturb the sick woman.

Witness asked his sister Thursday night if she had arranged her worldly affairs, and she said she had made her will. Then James Burke called witness from room, saying that the sick woman must not be disturbed.

Witness did not think his sister was competent to make a will at any time during her sickness.

On cross-examination by Judge Sweeney, Mr. Burke said he had a sister in Canada, and that she did not authorize witness to appear for her in opposition to the will, and that he was the only relative contesting the will.

Witness said he was indignant because the will was made without his knowledge, and intended to contest the will before contents were known, as he did not consider his sister competent to make a will during her last sickness.

Mary A. Burke, wife of Patrick Burke, testified she was very intimate with Miss Ellen Burke. Miss Burke never said anything about making a will. She said she was with Miss Burke through her sickness, but was not permitted to spend much time in the sick room. Father Dunn came and remained in the house all Wednesday afternoon. She heard Dr. Pagan say there was a change for the worse, and there was no need to leave any medicine. Father Dunn was in and out of the room during the afternoon. Witness left with her husband at about six o'clock and came back at seven in the evening. Her daughter, Mrs. Dowd, was in the house while witness was absent. Hannah Fay and Father Dunn were there. Nothing was said about the making of a will. Witness said she never knew a will was made until Father Dunn told her that matter was settled. Noticed Miss Burke's mind was wandering more or less after the Monday prior to her death. She said nothing about making her will.

On cross-examination: Miss Burke told witness Tuesday that she felt happier. Father Dunn was there again from early afternoon until ten o'clock at night.

Miss Helen Dowd, niece of Miss Burke, testified that when she called Wednesday evening Father Dunn was in the room with Miss Burke, and Hannah Fay called witness into an adjoining room. She looked into the sick room as she passed and saw Father Dunn, whose eyes were closed. Father Dunn came out and held conversation with Hannah Fay, leaving her in the small room. Hannah Fay then told her she could see Miss Burke. Father Dunn told witness that Miss Burke was conscious, but witness disagreed.



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